

May 4, 2017

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123; *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51; *Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket No. 13-24

Dear Ms. Dortch:

In accordance with the *Second Protective Order* for the above-referenced proceedings, Sorenson Communications, LLC (“Sorenson”) herein submits a redacted version of the attached ex parte in the above-referenced proceedings. Only the redacted version of the attached ex parte is being filed in CG Docket No. 13-24.

Sorenson has designated for highly confidential treatment the marked portions of the attached documents pursuant to the *Second Protective Order* in CG Docket Nos. 03-123 and 10-51.¹ Sorenson’s comments include granular data with respect to its costs for various categories of both allowed and additional costs, in absolute total and on a per-minute basis, the amount of traffic it receives, a list of its intellectual property and the valuation thereof, its interpreter efficiency, and its interpreter wage levels over time. As such these materials fall under the following enumerated items in Appendix A of the *Second Protective Order*:

2. Information that discusses in detail current or future plans to compete for a customer or specific groups or types of customers (*e.g.*, business or residential customers), including current and future procurement strategies, pricing strategies, product strategies, advertising or marketing strategies, business plans, technology implementation or deployment plans and strategies (*e.g.*, engineering planning documents), plans for handling acquired customers, and human resources and staffing strategies.
3. Information that provides granular information about a Submitting Party’s past, current or future costs, revenues, marginal revenues, or market share, and future dividends.

¹ *Structure & Practices of the Video Relay Serv. Program; Telecomms. Relay Servs. & Speech-to-Speech Servs. for Individuals with Hearing & Speech Disabilities*, Second Protective Order, DA 12-858, 27 FCC Rcd. 5914 (Cons. & Gov’t Affs. Bur. 2012).

REDACTED - FOR PUBLIC INSPECTION

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4. Information that provides numbers of customers or devices when broken down by sub-national geography, customer type (*e.g.*, business) and/or levels or patterns of VRS usage, or when in a time series.
6. Information that provides detailed or granular information about specific end point equipment or network operation, including engineering information and information related to equipment purchases or payments of licensing fees.

Pursuant to the protective order and additional instructions from Commission staff, Sorenson is filing a redacted version of the document electronically via ECFS, one copy of the Highly Confidential version with the Secretary, two copies of the redacted version with the Secretary, and sending copies of the highly confidential version to Eliot Greenwald and Robert Aldrich of the Consumer and Governmental Affairs Bureau and the TRS Reports mailbox.

Please contact me if you have any questions or require any additional information.

Sincerely,



John T. Nakahata
Counsel to Sorenson

Attachment

cc: Eliot Greenwald
Robert Aldrich
TRSReports@fcc.gov



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Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123; *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51; *Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket No. 13-24

Dear Ms. Dortch:

On May 2, 2017, Christopher Wright, Walter Anderson, Stephen Miller, Rajesh Srinivasan and I, outside counsel to Sorenson Communications, LLC (“Sorenson”), met with Brendan Carr, Acting General Counsel of the FCC; David Gossett, Deputy General Counsel of the FCC; and C. Grey Pash, Jr. and Terry Cavanaugh of the Office of the General Counsel, regarding the *Order and Further Notice of Proposed Rulemaking on Video Relay Services*¹ (“VRS”) and the 2013 *Report and Order and Further Notice of Proposed Rulemaking on Internet Protocol Captioned Telephone Service* (“IP CTS”).²

Five topics were discussed: the data submitted by Rolka Loube on April 27, 2017; the data submitted by ZVRS and Purple in their February 15, 2017 filings; the requirement that deaf consumers “pay rates no greater than the rates paid for functionally equivalent voice communication services”;³ the inclusion of intellectual property valuation in IP CTS and VRS rates; and the lack of notice for IP CTS rulemaking.

¹ See *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services; Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Notice of Inquiry, Further Notice of Proposed Rulemaking, and Order, 32 FCC Rcd. 2436, 2017 WL 1167513 (rel. Mar. 23, 2017) (“*Order and FNPRM*,” “*Order*,” or “*FNPRM*,” as appropriate).

² See *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order and Notice of Proposed Rulemaking, 28 FCC Rcd. 703 (2013).

³ 47 U.S.C. § 225(d)(1)(D).

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A. Data Submitted by Rolka Loube

First, Sorenson discussed the data issued by Rolka Loube on April 25, 2017, showing VRS providers' minutes, revenues, and expenses from 2014 to 2016.⁴ *****BEGIN HIGHLY CONFIDENTIAL INFORMATION***** [REDACTED]

*****END HIGHLY CONFIDENTIAL***** minutes per month and had allowable costs of *****BEGIN HIGHLY CONFIDENTIAL INFORMATION***** [REDACTED] *****END HIGHLY CONFIDENTIAL***** per minute.⁵ The data chart also showed that Purple provided on average more than *****BEGIN HIGHLY CONFIDENTIAL INFORMATION***** [REDACTED] *****END HIGHLY CONFIDENTIAL***** minutes per month and yet had allowable costs of *****BEGIN HIGHLY CONFIDENTIAL INFORMATION***** [REDACTED] *****END HIGHLY CONFIDENTIAL*****⁶

*****BEGIN HIGHLY CONFIDENTIAL INFORMATION***** [REDACTED]

*****END HIGHLY CONFIDENTIAL***** [REDACTED] *****END HIGHLY CONFIDENTIAL***** But Sorenson was troubled that this discrepancy was not acknowledged in the Noticed of Proposed Rulemaking.⁷

Sorenson urged the Commission to provide equal treatment to VRS providers that provide more than 500,000 minutes per month. If the Commission does not provide the same rate for these providers, these providers have no incentive to become more efficient. The proposals on the table will not provide such an incentive. Those proposals on the tier would only widen the gap between the first and third tiers.

B. Data Submitted by ZVRS and Purple

Sorenson noted discrepancies in the data provided by Rolka Loube, on the one hand, and the data submitted by ZVRS and Purple, on the other hand. In February, ZVRS told the Commission that its allowable costs for 2015 were *****BEGIN HIGHLY CONFIDENTIAL INFORMATION***** [REDACTED] *****END HIGHLY CONFIDENTIAL***** per minute, and Purple

⁴ See Attachment A to Letter from Eliot Greenwald, Deputy Chief, Disability Rights Office, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51 and 03-123 (filed Apr. 25, 2017) ("Rolka Loube Highly Confidential Data").

⁵ See *id.*

⁶ See *id.*

⁷ See *FNPRM*, 2017 WL 1167513 *30-31 ¶¶ 93-94.

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told the Commission that its allowable costs for 2015 were *****BEGIN HIGHLY CONFIDENTIAL INFORMATION***** *****END HIGHLY CONFIDENTIAL*****⁸ But Rolka Loube submitted data showing ZVRS's allowable costs for 2015 were *****BEGIN HIGHLY CONFIDENTIAL***** *****END HIGHLY CONFIDENTIAL***** per minute and Purple's allowable costs for 2015 were *****BEGIN HIGHLY CONFIDENTIAL***** *****END HIGHLY CONFIDENTIAL*****⁹ The costs submitted by ZVRS and Purple in February may have been *****BEGIN HIGHLY CONFIDENTIAL***** *****END HIGHLY CONFIDENTIAL***** Sorenson wanted to inform that Commission of this discrepancy because the numbers submitted by ZVRS and Purple influenced the rates discussed in the NPRM.¹⁰

Sorenson also discussed the chart submitted by Purple in this proceeding in support of changing the third tier from 1 million monthly minutes to 2.5 million monthly minutes.¹¹ The chart shows *****BEGIN HIGHLY CONFIDENTIAL***** *****END HIGHLY CONFIDENTIAL*****

CONFIDENTIAL*** Purple claimed that the chart is based on Purple 2015 actual cost data. *****BEGIN HIGHLY CONFIDENTIAL***** *****END HIGHLY CONFIDENTIAL***** Thus, Purple's chart cannot be based off their 2015 actual cost data. The chart is unsupported in other ways as well. Purple never explained how their allocations of costs changes as minutes increase, and Purple never explained the curve represented in the chart.

C. Requirement That Deaf Consumers Do Not Pay More Than Rates for Functionally Equivalent Voice Communication Services

Sorenson urged the Commission to fulfill the statutory requirement that deaf consumers "pay rates no greater than the rates paid for functionally equivalent voice communication services."¹² Sorenson presented a chart comparing what hearing users pay for voice service and what deaf consumers would pay for VRS under the FCC's principal proposal.¹³ Per month,

⁸ See Letter from Gregory Hlibok, Chief Legal Officer, CSDVRS, LLC d/b/a ZVRS, to Karen Peltz Strauss, FCC, CG Docket Nos. 10-51 and 03-123, at 3 (filed Feb. 15, 2017); Letter from Paul C. Besozzi, Counsel to Purple Communications, Inc., to Karen Peltz Strauss, FCC, CG Docket Nos. 10-51 and 03-123, at 5 (filed Feb. 15, 2017) ("Purple Feb. 15 Ex Parte").

⁹ See Rolka Loube Highly Confidential Data.

¹⁰ See *FNPRM*, 2017 WL 1167513 *30-31 ¶¶ 93-94.

¹¹ See Purple Feb. 15 Ex Parte at 2.

¹² 47 U.S.C. § 225(d)(1)(D).

¹³ See Comments of Sorenson Communications, LLC, Regarding Section IV.A-B and F of the Further Notice of Proposed Rulemaking at 3, Table 1, CG Docket Nos. 10-51 and 03-123 (filed Apr. 24, 2017) ("Sorenson Comments"). The hearing users' data was based on the

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hearing consumers only pay \$32.51 and a number surcharge, while deaf consumers would pay \$86.99, which includes a \$3.08 numbering charge and \$83.91 for broadband with a minimum 5 mbps upload speed. Deaf consumers need such high-speed broadband in order to use VRS effectively.

In addition, while hearing users pay only approximately \$10 to \$60 for the necessary equipment—a single-line telephone—a deaf consumer must pay \$600 to \$1800 for VRS-capable equipment, like a videophone and a monitor.¹⁴ Often, deaf consumers will need larger screens in order to effectively see sign language and facial gestures while using VRS.

Given these necessary costs, the Commission should take steps to ensure that deaf consumers do not pay more for functionally equivalent service. At the least, the Commission should avoid adding to deaf consumers' financial burden. The Commission should consider making numbering charges and research and development expenses allowable costs. The Commission should also set rates that cover the cost of equipment. In the past, the Commission has set rates high enough to allow VRS providers to give deaf consumers the necessary equipment. But the recent NPRM suggests lowering rates so that this practice does not continue. The Commission has notice to fix these issues, and it should clarify whether deaf consumers bear the responsibility for paying these costs themselves.

D. Intellectual Property Valuation in IP CTS

Sorenson discussed the different treatment of companies that develop their own intellectual property and companies that license intellectual property, in the context of IP CTS and VRS. It is apparent from Rolka Loube's report that the other IP CTS providers claim a considerable amount of "other costs" compared to Sorenson,¹⁵ and these other costs almost certainly include those licensing costs.

If the other providers can include the cost of intellectual property licensing, Sorenson should be able to include the value of the intellectual property owned by the company as a cost. Otherwise, providers have no incentive to develop their own intellectual property, since all providers are competing for the same customers and the customer does not get to choose the lowest-cost provider. If the Commission will not consider the value of Sorenson's intellectual

average rate from the Urban Rate Survey. *See* FCC URBAN RATE SURVEY DATA AND RESOURCES, 2017 Voice Survey Methodology at 6, *available at* <https://www.fcc.gov/file/12055/download> ("2017 Voice Survey Methodology").

¹⁴ *See* Sorenson Comments at 3, Table 1.

¹⁵ Interstate Telecommunications Relay Services Fund Payment Formula and Fund size Estimate at 1-3.2, CG Docket Nos. 10-51 and 03-123 (filed May 2, 2017).

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property, Sorenson has an incentive to spin out its intellectual property and license it, so that it can included in Sorenson's costs.

Likewise, the Commission should also include the value of intellectual property in VRS ratemaking.

E. Other Topics Related to IP CTS and VRS

Sorenson also briefly discussed market-based solutions for IP CTS ratemaking. As it did for VRS ratemaking, Sorenson proposed that the Commission could establish IP CTS rates using a reverse auction or that the Commission could abolish the TRS fund. Like in VRS and IP CTS, establishing price caps may not allow smaller providers to continue operating, and the Commission must make a policy choice on whether to continue subsidizing small providers.

Sorenson also commented on the Commission potentially adopting tiers for IP CTS rates. Sorenson expressed its belief that the Commission did not provide adequate notice in its 2013 IP CTS *NPRM* to initiate a rulemaking on this issue.

Sincerely,



John T. Nakahata

Counsel to Sorenson Communications, LLC

cc: Brendan Carr
David Gossett
C. Grey Pash, Jr.
Terry Cavanaugh